

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 18-CV-590

VLADIMIR M. GOROKHOVSKY, et al.,

Defendants.

ORDER AWARDING PLAINTIFF REASONABLE EXPENSES

On September 1, 2020, the court granted the United States' motion for sanctions. (ECF No. 142.) In doing so, "[p]ursuant to Fed. R. Civ. P. 37(a)(5)(A), (b)(2)(C) & (d)(3), the Court award[ed] the United States its reasonable attorney's fees and expenses in preparing for and holding the August 4, 2020 deposition and in preparing its motion for sanctions" (ECF No. 142 at 12.) The court ordered the United States to submit its reasonable expenses no later than September 8, 2020, and the defendants to respond no later than September 15, 2020. (ECF No. 142 at 12.) The United States submitted its expenses (ECF No. 144) but the defendants did not respond.

The costs associated with the two depositions that Gorokhovskiy failed to attend consisted of cancellation fees for a court reporter and a videographer as well charges for

three hook-ups for video streaming--\$1,070 each day, for a total of \$2,140. The expenses were incurred because of the defendants' failure to attend their depositions and are reasonable. *See* Fed. R. Civ. P. 37(b)(2)C), (d)(3).

As for attorney fees, the United States proposes an hourly rate equivalent to that available to attorneys under the Equal Access to Justice Act—\$193.02. This rate is reasonable. The United States alleges that it spent 110 hours in preparing for the two depositions, preparing the motion to compel, and tasks related to both.

The United States is entitled to recoup reasonable attorney fees for time it needlessly expended due to the defendants' failure to appear at the depositions, including fees expended in pursuing the motion to compel. *See* Fed. R. Civ. P. 37(b)(2)C), (d)(3). However, not all of the time expended was because of the defendants' failure to comply with this court's order when they did not appear for the depositions. (ECF No. 144 at 2, ¶ 3. a-c.)

In an ordinary case, when a party fails to attend a deposition the court orders the non-compliant party to pay the costs and attorney fees associated with the missed deposition—e.g., the cost of the court reporter, the attorney fees incurred by the attorney in attending the deposition, and the costs associated with litigating a motion to compel. The court usually does not order the non-compliant party to pay for the attorneys' time spent preparing for the deposition, which is generally rescheduled, resulting in the preparation time not going to waste.

But here the two depositions will not be rescheduled as a result of the sanctions the court imposed. However, that does not mean that the attorney fees expended in preparing for the deposition were “caused by” the defendants’ failure to comply with the court’s order by not appearing for their depositions. If Gorokhovsky had attended the depositions as the court had ordered him to, the United States would have incurred the same amount of fees preparing for the depositions. Although a litigant might be ordered to pay additional sums as a sanction for misconduct, the non-monetary sanctions the court already imposed are sufficient.

Therefore, the court excludes all attorney fees expended prior to August 4, 2020 (28 hours), as well as two hours for work done on August 4, for a total reduction of 30 hours. The remainder of the United States’ claimed hours are reasonable.

IT IS THEREFORE ORDERED that Vladimir Gorokhovsky and Gorokhovsky Imports and Investment Group, LLC, jointly and severally, shall pay to the United States the sum of **\$17,581.60** as “the reasonable expenses, including attorney’s fees, caused by the failure” to comply with this court’s order. *See* Fed. R. Civ. P. 37(b)(2)C), (d)(3). This sum is comprised of 80 hours of attorney time at a rate of \$193.02 per hour, for a total of \$15,441.60, plus \$2,140 for the costs of the two scheduled depositions.

Dated at Milwaukee, Wisconsin this 18th day of September, 2020.


WILLIAM E. DUFFIN
U.S. Magistrate Judge